

48A C.J.S. Judges § 219

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

A. General Considerations

§ 219. Liability on official bond

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  37

The judge and his or her sureties become liable on the official bond on breach of a duty by the judge coming within the terms of the bond, including statutory duties considered part of the bond; but the surety cannot be held liable for judicial acts of the judge for which the judge cannot be held liable.

The bond required of a judge in qualifying for office is breached so as to render the sureties liable by the violation of any duty on the part of the judge which is within the terms of the bond.¹ Included therein are all wrongful acts or omissions of the judge within the limits of what the law authorizes or enjoins on him or her as a judge.² The terms of statutes relating to the judge's duties and responsibilities may constitute a part of the bond.³ In some jurisdictions, the liability of the surety is limited to acts done by the judge by virtue of his or her office,⁴ or by reason of the fact that the judge holds office,⁵ and does not extend to acts done under mere color of office.⁶ However, a surety is liable for acts done by a judge under color of office, as well as by virtue of the office.⁷

If the judge is not liable for acts in his or her judicial capacity as distinguished from ministerial acts, the surety cannot be held liable for such acts.⁸ This is so notwithstanding the existence of a statute which extends the liability of the surety to acts performed by the judge under color of the office.⁹

Interest.

Insofar as required by the statutes, the judge and the surety may be held liable for interest on the loss resulting from a breach of duty.¹⁰ They are liable for interest on moneys converted by the judge,¹¹ and demand is not necessary in order to charge them therewith.¹² On the other hand, it has been held by virtue of statute that funds in the hands of a judge and due to an heir or devisee do not bear interest until demand for payment is made and identity established.¹³

Remedy of surety against principal.

The surety is entitled to be protected against all necessary expenses incurred in defending itself against liability on the bond¹⁴ and ordinarily is allowed to exercise a reasonable discretion as to the necessary measures of defense.¹⁵ However, where the expenses are unnecessary, there can be no recovery.¹⁶

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 Neb.—*Ericsson v. Streitz*, 132 Neb. 692, 273 N.W. 17 (1937).
 S.C.—*Fleming v. McLure*, 171 S.C. 147, 171 S.E. 804 (1933).
- 2 Neb.—*U. S. Fidelity & Guaranty Co. v. Bates*, 139 Neb. 131, 296 N.W. 560 (1941).
 Okla.—*Lasater v. Sterling*, 1930 OK 199, 143 Okla. 218, 289 P. 337 (1930).
- 3 Tex.—*Simpson v. Booth*, 163 S.W.2d 1080 (Tex. Civ. App. Dallas 1942), writ refused w.o.m., (Oct. 14, 1942).
- 4 Neb.—*U. S. Fidelity & Guaranty Co. v. Bates*, 139 Neb. 131, 296 N.W. 560 (1941).
- 5 Wis.—*Forest County v. Dawley*, 149 Wis. 323, 136 N.W. 335 (1912).
- 6 Neb.—*U. S. Fidelity & Guaranty Co. v. Bates*, 139 Neb. 131, 296 N.W. 560 (1941).
- 7 Idaho—*Grayson v. Linton*, 63 Idaho 695, 125 P.2d 318 (1942).

- 8 Ala.—*Pickett v. Richardson*, 223 Ala. 683, 138 So. 274 (1931).
S.C.—*Lide v. Fidelity & Deposit Co. of Maryland*, 191 S.C. 297, 4 S.E.2d 263 (1939).
- 9 Ala.—*Pickett v. Richardson*, 223 Ala. 683, 138 So. 274 (1931).
- 10 Ky.—*Rider's Ex'x v. Sherrard's Guardian*, 231 Ky. 112, 21 S.W.2d 147 (1929).
- 11 Ala.—*Randolph v. Brown*, 115 Ala. 677, 22 So. 524 (1897).
- 12 Ala.—*Bradley v. Harden*, 73 Ala. 70, 1882 WL 1152 (1882).
- 13 Neb.—*Ericsson v. Streitz*, 132 Neb. 692, 273 N.W. 17 (1937).
- 14 Neb.—*American Sur. Co. of New York v. Vinsonhaler*, 92 Neb. 1, 137 N.W. 848 (1912).
- 15 Neb.—*American Sur. Co. of New York v. Vinsonhaler*, 92 Neb. 1, 137 N.W. 848 (1912).
- 16 Neb.—*American Sur. Co. of New York v. Vinsonhaler*, 92 Neb. 1, 137 N.W. 848 (1912).

End of Document

© 2023 Thomson Reuters. No claim to original U.S.
Government Works.